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In re Application of:
HOFMANN, Albrecht, et al.
U.S. Application No.: 10/511,285
PCT No.: PCT/DE03/01079
International Filing Date: 02 April 2003
Priority Date: 18 May 2002
Attorney's Docket No.: 2998
For: SYSTEM COMPRISING A TOOL
RETAINER

DECISION ON RENEWED
PETITIONS UNDER 37 CFR
1.137(b) AND 1.47(a)

This communication is issued in response to applicants' "Renewed Petition To Revive, Supporting Documents" filed on 20 February 2007. No petition fee is required.

BACKGROUND

The procedural background for this application was set forth in the communication mailed 23 November 2005 and the decision mailed 09 February 2007.

The 23 November 2005 communication informed applicants' that the declaration filed on 14 October 2004 was unacceptable under 37 CFR 1.42. Because applicants did not file a timely response to this communication, the application became abandoned at midnight on 23 January 2006.

On 17 January 2007, applicants filed a "Petition To Revive" with accompanying materials. The petition asserted that the legal representative of the deceased inventor had refused to execute the declaration.

The 09 February 2007 decision dismissed applicants' petition for revival for failure to satisfy all the requirements of a grantable petition. Specifically, applicants had not provided the "required reply," that is, an declaration acceptable under 37 CFR 1.42 and 1.497, or a grantable petition under 37 CFR 1.47(a) for acceptance of a declaration without the signature of the legal representative of the deceased inventor.

On 20 February 2007, applicants filed the renewed petition for revival considered herein.

DISCUSSION

A. Renewed Petition Under 37 CFR 1.47(a):

The renewed petition includes the authorization to charge Deposit Account No. 19-4675 the required petition fee, and it includes an express statement of the last known address of the legal representative of the deceased inventor. As noted in the previous decision, applicant has previously filed a declaration executed by the three surviving inventors which includes an unsigned signature block for the deceased inventor and sets forth the legal representative's name, address, and citizenship. Thus, applicants have satisfied the first three requirements of a grantable petition under 37 CFR 1.47(a).

The final requirement of a grantable petition is an acceptable showing that the legal representative has refused to execute the declaration or cannot be located after diligent effort. Applicant here has provided copies of two letters requesting the legal representative's signature. Counsel provides a firsthand statement that these letters were sent to the legal representative at her last known address, that the second letter was accompanied by a copy of the complete application, and that no response was received to these letters. However, applicant has provided no supporting evidence to confirm that these materials were received by the legal representative (i.e., delivery receipts from Federal Express confirming that the letters were received and signed for by the legal representative). In addition, it is not clear from the present materials that a copy of the present application was provided to the legal representative, in that the 20 September 2005 letter refers to a copy of a single enclosed application, while the caption of the letter (and the previous letter) refer to two different U.S. applications. Finally, while the renewed petition refers to a statement from a representative of the assignee regarding the legal representative's refusal to sign any documents, applicants have not provided this letter.

Based on the above, the present submission is not sufficient to confirm the refusal of the legal representative to sign the declaration herein. Applicants must supplement the present submission with evidence confirming the delivery to the legal representative of the letters requesting her signature, as well as evidence confirming that the legal representative has been provided with a copy of the present application. Until such materials are provided, the final requirement of a grantable petition under 37 CFR 1.47(a) is not considered satisfied.

B. Renewed Petition Under 37 CFR 1.137(b)

As set forth in the previous decision, the "required reply" element of a grantable petition for revival requires either an acceptable declaration executed by the legal representative on behalf of the deceased inventor or a grantable petition under 37 CFR 1.47(a) for acceptance of the declaration without the legal representative's signature. As set forth above, the present petition under 37 CFR 1.47(a) is not grantable on the present record, and applicants have not submitted a declaration executed by the legal representative. The "required reply" element of a grantable petition has therefore not been satisfied. Accordingly, the renewed petition for revival cannot be granted on the present record.

CONCLUSION

The petition under 37 CF 1.47(a) seeking acceptance of the application without the signature of the legal representative of deceased inventor Markus HECKMANN is **DISMISSED** without prejudice.

The renewed petition for revival under 37 CFR 1.137(b) is **DISMISSED** without prejudice.

If reconsideration on the merits of the petitions is desired, a proper response must be filed within **TWO (2) MONTHS** of the mail date of the present decision. Any request for reconsideration must include the missing requirements discussed above, that is, either an acceptable declaration executed by the legal representative of the deceased inventor, or the materials needed to satisfy the final requirement of a grantable petition under 37 CFR 1.47(a) for acceptance of the declaration without the signature of the legal representative, as discussed above (and in the form required by MPEP section 409.03(d)).

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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